IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.40 OF 2005

Smt. Rupali Manikrao Mandake
and 4 Ors. ...Petitioners

V/s

Balwant Sngh Bhagat Singh
Barad and Anr. ...Respondents.

Mr. Rajesh Datar for the petitioners.

Mr. A.S. Shitole, APP for the respondent - State.

CORAM: V.M. KANADE, J.
DATE : 23rd February, 2005

P.C.

1. Heard the learned Counsel for the petitioners and the learned APP for the State.

2. Petitioners are the original accused in Regular Criminal Case No.473 of 2004 which is pending in the Court of Judicial Magistrate, First Class, Thane. Petitioners take exception to the order dated 24/9/2004 passed by the JMFC, IInd Court, Thane whereby the process has been issued against the petitioners under sections 468, 474, 441, 427 read with section 34 of the Indian Penal Code. The

Magistrate has observed that sections 420, 463, 464, 465 are covered under section 468 of the I.P.C. and, therefore, process under those sections has not been issued.

3. The learned Counsel appearing for the petitioners submits that in view of the judgment of the Apex Court in the case of Adalat Prasad Vs. Rooplal Jindal and others reported in 2004(4) Mh.L.J.274 and in the case of Subramanium Sethuraman Vs. State of Maharashtra reported in 2005(1) Mh.L.J.626, the petitioners have no other alternative efficacious remedy available for making application before the Trial Court for recall of the process and/or for seeking discharge under section 245 of the Criminal Procedure Code. I am unable to accept the said submission made by the learned Counsel appearing for the petitioners. Petitioners still have an alternative efficacious remedy of applying for discharge under section 245 of the Criminal Procedure Code since the process has been issued by the Magistrate in a warrant case.

4. Petitioners, therefore, are at liberty to apply for discharge at the appropriate stage. On such application being made, the Trial Court to consider all the submissions made by the petitioners and shall

not reject the application merely because some of the offences in the group of offences are summons triable cases. With these observations, Criminal Writ Petition is disposed of.

V.M. KANADE, J.